

**COURT OF APPEALS
DECISION
DATED AND FILED**

April 4, 2013

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2012AP2087-CR

Cir. Ct. No. 2010CT96

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

MICHAEL E. ZINKE,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Marquette County:
RICHARD O. WRIGHT, Judge. *Affirmed.*

¶1 BLANCHARD, J.¹ Michael E. Zinke appeals the circuit court judgment convicting him on a guilty plea of one count of operating a motor

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f). All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

vehicle while under the influence of an intoxicant, as a third offense. He argues that the police officer who stopped and arrested him was outside the officer's area of "home" jurisdictional authority and therefore lacked statutory authority to conduct the stop and arrest. For the reasons explained below, I conclude that, given the facts found by the circuit court which are not clearly erroneous, the officer had authority to stop and arrest Zinke, based on the mutual aid provision in WIS. STAT. § 66.0313(2). Accordingly, I affirm.

BACKGROUND

¶2 The Village of Westfield is located in Marquette County and has a police department. On August 3, 2010, a Village of Westfield police officer was traveling on a county highway in Marquette County, well outside his jurisdictional area, when he observed a vehicle in front of him repeatedly deviating from its designated lane.

¶3 The officer promptly radioed the Marquette County Dispatch Center with his observations of this erratic driving. According to the officer, the Dispatch Center informed him that no other on-duty law enforcement officer was available in the area to respond and requested his assistance, including a specific request that he stop the driver. The officer stopped the vehicle and made contact with the sole occupant, later identified as Zinke, and ended up arresting him. Zinke was charged, as relevant here, with operating a motor vehicle while intoxicated as a third offense.

¶4 Zinke moved the circuit court to dismiss the complaint, alleging that the stop and arrest were accomplished without legal authority because the officer was outside his home jurisdiction at the time of the stop and arrest. The circuit court denied the motion after determining that "it is clear that the officer had the

authority to proceed as he did when he was requested to respond pursuant to mutual aid.” The court concluded that the county’s request for mutual aid gave the officer authority to stop and arrest Zinke, consistent with WIS. STAT. § 66.0313.

¶5 Zinke pled guilty to the operating while intoxicated charge. As indicated above, he appeals the resulting judgment.

DISCUSSION

¶6 Zinke argues in this appeal that the circuit court erred in concluding that the officer acted with lawful authority when he made the stop and arrest because the mutual aid statute the court relied upon does not apply. He further argues that his conviction cannot be upheld on the alternative ground that the officer was making a “citizen’s” arrest. Because I agree with the circuit court that the officer was acting lawfully under the mutual aid statute, there is no need to reach the question of whether the officer could have made or did make a legitimate citizen’s arrest.

¶7 It is undisputed that, if the mutual aid statute applies, then the officer here had authority to stop and arrest Zinke.² Zinke also does not dispute that the Marquette County Dispatch Center generally had authority to request mutual aid from law enforcement officers in the geographical area of the stop and arrest here. As relevant, the statute provides:

² Zinke does not argue that this court should distinguish between the officer’s stop of his vehicle and his arrest. Nor does he provide any authority suggesting that when there is a request for mutual aid to make a stop or investigate, the responding officer cannot make an arrest without an additional specific request to arrest. Accordingly, I treat the stop and arrest as one unit for purposes of analysis.

[U]pon the request of any law enforcement agency, including county law enforcement agencies as provided in s. 59.28(2), the law enforcement personnel of any other law enforcement agency may assist the requesting agency within the latter's jurisdiction, notwithstanding any other jurisdictional provision.

WIS. STAT. § 66.0313(2).

¶8 Zinke's argument requires application of WIS. STAT. § 66.0313(2) to the facts. The application of a statute to a particular set of facts is a question of law reviewed without deference to the circuit court. *City of Brookfield v. Collar*, 148 Wis. 2d 839, 841, 436 N.W.2d 911 (Ct. App. 1989). However, this court defers to the circuit court's fact findings and overturns those findings only if they are clearly erroneous. *State v. Drew*, 2007 WI App 213, ¶11, 305 Wis. 2d 641, 740 N.W.2d 404.

¶9 Zinke appears to argue that mutual aid under WIS. STAT. § 66.0313 is limited to situations in which the requesting jurisdiction initiates communication with the responding officer. He argues that, because the officer who stopped and arrested him was "miles away from his home jurisdiction" when he contacted the county center and because the officer called the county to "get permission to stop the vehicle," the mutual aid statute does not apply. This argument is not persuasive for two reasons.

¶10 First, the statute by its plain language requires only that the officer act in response to a request for assistance. Nothing in the language of the statute or any Wisconsin case law that Zinke cites suggests that the statute does not apply if the responding officer is "miles away" from his home jurisdiction or initiates communication with the requesting jurisdiction. What matters is that the responding officer acts in response to the request. Indeed, Zinke's interpretation

of the statute would produce an absurd result by rendering law enforcement officers in situations like this one essentially unable to respond in a timely manner to observations suggesting potentially dangerous illegal activity. This court must interpret statutory language to avoid absurd or unreasonable results. *State ex rel. Kalal v. Circuit Court for Dane County*, 2004 WI 58, ¶46, 271 Wis. 2d 633, 681 N.W.2d 110.

¶11 Second, the portion of Zinke’s argument referring to the officer seeking and receiving “permission” to make a stop outside his jurisdiction essentially ignores the circuit court’s specific fact findings. As indicated above, the court found that the officer called to report his observations, at which point he received a “request[] to respond pursuant to mutual aid.” These findings of fact were based on the officer’s testimony to this same effect, and are not clearly erroneous.³

¶12 Finally, Zinke’s citations to authority from other states are unavailing. He argues that this case is similar to *City of Cincinnati v. Alexander*, 375 N.E.2d 1241 (Ohio 1978). However, in *Alexander*, two police officers stopped the defendant outside the officers’ jurisdiction and placed the defendant under arrest *without* any request from the agency assigned to that jurisdiction. *See*

³ Given the circuit court’s finding, which is not clearly erroneous, that the officer here merely reported observations that prompted an explicit request, there is no need to address the question of whether the mutual aid provision at issue here could apply if the facts were that the officer had instead requested and received “permission” to stop Zinke. That is, whether there is a distinction that could matter under the statute between “requests” and “grants of permission” is not at issue here. *Cf. United States v. Mattes*, 687 F.2d 1039, 1041 (7th Cir. 1982) (interpreting identical language from a prior version of the statute and concluding that communications that convey an implicit request may be sufficient).

id. at 1242. The State correctly points out that *Alexander* is therefore factually distinguishable.

¶13 Zinke also cites *Frazer v. State*, 94 S.W.3d 357 (Ark. Ct. App. 2002), and *Commonwealth v. Donton*, 654 A. 2d 580 (Pa. Super. Ct. 1995), to suggest that the officer here was both required to get permission before initially *entering* the requesting jurisdiction, and to have probable cause that a crime was being committed before he entered that jurisdiction. However, neither of those cases assist Zinke because each focuses on hot pursuit rather than on mutual aid. *See Frazer*, 94 S.W.3d at 361-62; *Donton*, 654 A. 2d at 582, 586-87.

CONCLUSION

¶14 In sum, for the reasons stated, I am satisfied that, given the facts found by the court which are not clearly erroneous, the officer was acting with lawful authority based on the mutual aid provision in WIS. STAT. § 66.0313(2). The circuit court's judgment of conviction is therefore affirmed.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)4.

